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11 Attorney for Defendant Pharmaganics LLC  
12 (erroneously sued as "Pharmagenics LLC")  
13

14

15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17  
18  
19  
20 PEDRO IBARRA, individually and  
21 on behalf of all other similarly  
22 situated,

23 Plaintiff,

24 v.

25  
26 PHARMAGENICS LLC; DOES 1  
27 THROUGH 10, inclusive,

28 Defendants.

Case No.:

**DEFENDANT PHARMAGANICS  
LLC'S NOTICE OF REMOVAL OF  
ACTION PURSUANT TO 28 U.S.C. §  
1332(d)**

1                   **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**  
 2 **THE CENTRAL DISTRICT OF CALIFORNIA:**

3                   PLEASE TAKE NOTICE that Defendant Pharmaganics LLC (erroneously sued  
 4 as “Pharmagenics LLC”) (“Defendant”), hereby removes this action from the Superior  
 5 Court for the State of California for the County of Orange to the United States District  
 6 Court for the Central District of California, pursuant to 28 U.S.C. § 1332(a) and (d),  
 7 § 1453, § 1441, and § 1446. Defendant hereby provides “a short and plain statement  
 8 of the grounds for removal” pursuant to 28 U.S.C. § 1446(a).

9                   **STATEMENT OF THE CASE AND TIMELINESS OF REMOVAL**

10                  1. On December 2, 2022, Plaintiff Pedro Ibarra (“Plaintiff”) commenced an  
 11 action against Defendant in the Superior Court of the State of California for the County  
 12 of Orange, Case Number 30-2022-01294748-CU-CR-CXC, by filing a Complaint  
 13 entitled “*Pedro Ibarra, individually and on behalf of all others similarly situated v.*  
 14 *Pharmagenics LLC, and DOES 1 through 10, inclusive.*”

15                  2. According to the proof of service filed by Plaintiff (ECF No. 11), Defendant  
 16 received a copy of the Complaint and Summons via service of process on December 15,  
 17 2022. Defendant did not receive service of the Complaint at any time prior to December  
 18 15, 2022. True and correct copies of the Complaint, Summons, and Civil Case Cover  
 19 Sheet are attached respectively hereto as ibits 1- 3.

20                  3. In his Complaint, Plaintiff alleges that Defendant manufactures and sells Dr.  
 21 Stephanie’s Carb & Sugar Blocker (the “Product”), and that Defendant makes “false and  
 22 misleading efficacy claims” to market and advertise the Product. (See Complaint  
 23 (“Compl.”), ¶¶ 1, 16.) Plaintiff seeks, among other things, to certify a putative class that  
 24 purports to include “[a]ll persons who purchased the Product in California for personal  
 25 use during the Class Period.” (*Id.* ¶ 20.)

26                  4. The Complaint asserts cause of action against Defendant for supposed  
 27 violations of California Business and Professions Code §§ 17200, et seq. (the Unfair  
 28 Competition Law (“UCL”)) and 17500, et seq. (the False Advertising Law (“FAL”)), the

1 Consumers Legal Remedies Act, Cal Civ. Code § 1750, et seq. (“CLRA”), breach of  
2 express warranty, and breach of implied warranty.

3 5. On December 22, 2022, the state court issued an order declaring the case  
4 complex and scheduling a case management conference. A true and correct copy of that  
5 order is attached hereto as Exhibit 4.

6 6. This removal is timely as required by 28 U.S.C. § 1446(b), as it is brought  
7 within thirty (30) days of December 15, 2022.

8 **SUBJECT MATTER JURISDICTION**

9 7. This Court has original jurisdiction over this action under the Class Action  
10 Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332, 1441, and 1453. This Court  
11 specifically has jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”),  
12 codified in part at 28 U.S.C. §§ 1332(d)(2) and 1453(b), because it is a civil action styled  
13 as a class action in which: (1) the number of members of the proposed plaintiff class is  
14 not less than one hundred, in the aggregate; (2) the matter in controversy exceeds the sum  
15 or value of \$5,000,000, exclusive of interest and costs; and (3) any member of the class  
16 of plaintiffs is a citizen of a State different from any defendant. 28 U.S.C. §§ 1332(d)(2),  
17 (d)(5)(B) and (d)(6).

18 **PLAINTIFF’S CLASS IS STYLED AS A PUTATIVE CLASS ACTION**

19 **WITH A PROPOSED CLASS OF NOT LESS THAN 100 MEMBERS**

20 8. The Court has CAFA jurisdiction because this lawsuit is a putative class  
21 action, and the proposed class comprises more than 100 individuals. (Compl., ¶ 20.A.)

22 9. CAFA jurisdiction exists over any “class action” brought under any “State  
23 statute or rule of judicial procedure authorizing an action to be brought by 1 or more  
24 representative persons as a class action.[.]” 28 U.S.C. § 1332(d)(1)(B). This case  
25 constitutes a “class action” for purposes of removal because Plaintiff styles her complaint  
26 as a “Class Action.” (Compl. caption.) Plaintiff alleges that “[a] class action is superior  
27 to other available methods of adjudication because individual litigation of the claims of

1 all Class Members is impracticable and inefficient.” (Compl. ¶ 20.E.) Thus, this action  
 2 qualifies as a class action under CAFA.

3 10. CAFA jurisdiction exists unless “the number of members of all proposed  
 4 plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(B). CAFA  
 5 defines class members as the persons, named or unnamed, who fall within the definition  
 6 of the proposed or certified class in a class action. 28 U.S.C. § 1332(d)(1)(D). This  
 7 requirement is met here because Plaintiff alleges that the purported class members  
 8 number “in the thousands, if not more.” (Compl. ¶ 20.A.) Thus, on the face of the  
 9 pleadings there are more than 100 members in Plaintiff’s proposed class.

10 **THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

11 11. “To meet CAFA’s amount- in-controversy requirement,” a defendant need  
 12 only “plausibly show that it is reasonably possible that the potential liability exceeds \$5  
 13 million.” *Greene v. Harley Davidson*, 965 F.3d 767, 772 (9th Cir. 2020). “[T]he amount  
 14 in controversy is the ‘amount at stake in the underlying litigation.’” *Id.* (quoting *Gonzales*  
 15 v. *CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016)). “‘Amount at  
 16 stake’ does not mean likely or probable liability; rather it refers to possible liability.”  
 17 *Id.* Among other items, “the amount in controversy includes damages  
 18 (compensatory, punitive, or otherwise), the costs of complying with an injunction, and  
 19 attorneys’ fees awarded under fee-shifting statutes or contract.” *Fritsch v. Swift*  
 20 *Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793 (9th Cir. 2018).

21 12. “In measuring the amount in controversy, a court must assume that  
 22 the allegations of the complaint are true and that a jury will return a verdict for the plaintiff  
 23 on all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d  
 24 1199, 1205 (E.D. Cal. 2008) (citing *Kenneth Rothschild Trust v. Morgan Stanley Dean*  
 25 *Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). Defenses that a defendant may assert  
 26 are not considered in assessing the amount placed in controversy. See *Riggins v. Riggins*,  
 27 415 F.2d 1259, 1262 (9th Cir. 1969); *Lara v. Trimac Transp. Svcs. (W.) Inc.*, No. CV 10-  
 28 4280-GHK (JCx), 2010 WL 3119366, \*3 (C.D. Cal. Aug. 6, 2010).

1       13. Defendant may assume a recovery rate of 100% in calculating the amount  
 2 in controversy. *See, e.g., Ritenour v. Carrington Mortgage Servs. LLC*, 228 F. Supp. 3d  
 3 1025, 1030 (C.D. Cal. 2017).

4       14. Where the Complaint does not state the amount in controversy, the  
 5 defendant's notice of removal need only include "a plausible allegation that the amount  
 6 in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating*  
 7 *Co. v. Owens*, 574 U.S. 81, 89 (2014); *see also Greene*, 965 F.3d at 772. No antiremoval  
 8 presumption attends cases invoking CAFA. *Greene*, 965 F.3d at 772.

9       15. While Defendant contests any liability on Plaintiff's claims, Plaintiff's  
 10 class claims place in controversy an amount more than \$5,000,000. Plaintiff alleges that  
 11 he and the putative class members (in a putative California-wide class), among other  
 12 things, are entitled to recover from Defendant damages "in the amount of the  
 13 Product's purchase price" and/or "restitution in the amount of the purchase price paid by  
 14 the class members for the Product." (Compl. ¶ 50; *see also id.* at Prayer for Relief, ¶ viii.).  
 15 The applicable statute of limitations for a UCL claim or a breach of warranty claim is  
 16 four years. Cal. Bus. & Prof. Code § 17208 (UCL); *Kreiger v. Nick Alexander Imports,*  
 17 *Inc.*, 234 Cal.App.3d 205, 213-14 (1991) (breach of warranty). From December 2, 2018,  
 18 through the end of December 2022, the total California-wide retail sales for the Product  
 19 exceed \$1,900,000. Furthermore, the Complaint alleges a class of undefined (open-  
 20 ended) duration and alleges that Defendant's allegedly wrongful practices are ongoing.  
 21 Class periods commonly extend to the date of class certification. *See, e.g. Kang v. Credit*  
 22 *Bureau Connection, Inc.*, No. 1:18-cv-01359, 2022 WL 658105, at \*3 (E.D. Cal. 2022);  
 23 *Cruz v. Dollar Tree Stores, Inc.*, No. 07-2050, 2009 WL 1974404, at \*2 (N.D. Cal. July  
 24 2, 2009). In instances in which a class action is certified, the order of certification  
 25 commonly (and typically) is not entered until well over a year after the Complaint is filed.  
 26 Sales of the Product in California in 2023 are conservatively estimated to exceed  
 27 \$700,000. As noted, Plaintiff also seeks punitive damages on behalf of the putative class.  
 28 In a case involving a claim for punitive damages under the CLRA, such as this case, it is

1 reasonable to assume that a punitive damages-to-compensatory damages ration of 1:1 or  
 2 higher is at stake. *Greene*, 965 F.3d at 772.

3       16. Plaintiff and his putative class also seek to recover attorneys' fees, which  
 4 are available by statute under the CLRA. Compl., Prayer, ¶ x. “[A] court must include  
 5 future attorneys' fees recoverable by statute or contract when assessing whether the  
 6 amount-in-controversy requirement is met.” *Fritsch*, 899 F.3d at 794. “[T]he Ninth  
 7 Circuit has established 25% as a benchmark award for attorneys' fees” in class actions.  
 8 *Lopez v. First Student, Inc.*, 427 F. Supp. 3d 1230, 1238 (C.D. Cal. 2019); *accord*  
 9 *Austin v. Foodliner, Inc.*, No. 16-CV- 07185-HSG, 2019 WL 2077851, at \*6 (N.D.  
 10 Cal. May 10, 2019). The attorneys' fees placed in controversy exceed \$650,000.

11       17. In addition, Plaintiff and her putative class seek injunctive relief, including  
 12 but not limited to stopping the sales, compelling Defendant to “destroy all misleading  
 13 and deceptive advertising materials and product labels, and to recall all offending  
 14 Products” and “to conduct a corrective advertising campaign.” Complaint, ¶¶ 20, 29, 30,  
 15 36, and Prayer for Relief. The amount in controversy includes “the costs of complying  
 16 with an injunction.” *Fritsch*, 899 F.3d at 793; *accord Chavez v. JPMorgan Chase & Co.*,  
 17 888 F.3d 413, 416 (9th Cir. 2018); *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d  
 18 644, 648-49 (9th Cir. 2016) (district court did not err in finding amount in  
 19 controversy satisfied where potential cost of complying with injunctive relief  
 20 considered). The sweeping injunctive relief sought by Plaintiff would require substantial,  
 21 costly efforts by Defendant. For example, Defendant would have to remove the product  
 22 from shelves, warehouses and distribution centers. At a minimum, all inventory would  
 23 have to be replenished in new packaging (including the costs of designing, preparing  
 24 and producing new packaging), and additional costs would be incurred for a  
 25 “corrective” advertising campaign if Plaintiff were to prevail on his claim for injunctive  
 26 relief as pled. Considering the expense of complying with the requested injunctive relief, and  
 27 coupling those expenses with compensatory damages/restitution, punitive damages, and attorneys'  
 28 fees, Defendant alleges that the amount in controversy substantially exceeds \$5 million.

1       18. While Defendant denies it has any liability to Plaintiff or to the putative  
2 class, and denies that action will satisfy the requirements for class certification under  
3 Fed. R. Civ. P. 23, the amount in controversy is not a merits issue. In light of the  
4 damages, restitution, punitive damages, attorneys' fees and costs of complying with  
5 injunctive relief, the Complaint puts an amount in controversy in excess of \$5,000,000.

6       19. Accordingly, this Court has original subject matter jurisdiction pursuant  
7 to CAFA.

## CLASS MEMBERS ARE CITIZENS DIFFERENT STATES

9        20. CAFA jurisdiction is met where “any member of a class of plaintiffs is a  
10 citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). That  
11 requirement is met here. Plaintiff alleges that he is a citizen of California. (Dkt. 1, ¶ 4.)  
12 Defendant is a limited liability company organized under the laws of Minnesota with  
13 its principal place of business in Minnesota. An LLC’s citizenship in a CAFA action is  
14 determined by its state of organization and principal place of business. *Ferrell v.*  
15 *Express Check Advance of S.C. LLC*, 591 F.3d 698, 702-04 (4th Cir. 2010). Thus, there  
16 is minimal diversity under 28 U.S.C. § 1332(d)(2)(A).

## **EXCEPTIONS TO REMOVAL DO NOT APPLY**

18        21. This action does not fall within any exclusions to removal jurisdiction  
19 recognized by 28 U.S.C. § 1332(d)(3), (4), (9) or 28 U.S.C. § 1453(d). Under §  
20 1332(d)(3), a court may decline to exercise jurisdiction over a class action where  
21 “greater than one-third but less than two-thirds of the members of all proposed plaintiff  
22 classes in the aggregate and the primary defendants are citizens of the State in which  
23 the action was originally filed...” Here, because Plaintiff alleges a California-only class,  
24 greater than two-thirds of the members of the proposed class are citizens of California.  
25 Furthermore, Defendant is not a citizen of California. Therefore, this exclusion does not  
26 apply.

27        22. 28 U.S.C. § 1332(d)(4)(A) requires a district court to decline jurisdiction  
28 over a class action in which, among other things, “greater than two-thirds of the

1 members of all proposed plaintiff classes in the aggregate are citizens of the State in  
 2 which the action was originally filed...[and] at least 1 defendant is a defendant...who  
 3 is a citizen of the State in which the action was originally filed..." Similarly, §  
 4 1332(d)(4)(B) requires a district court to decline jurisdiction where "two-thirds or more  
 5 of the members of all proposed classes in the aggregate, and the primary defendants,  
 6 are citizens of the state in which the action was originally filed." Here, Defendant is a  
 7 citizen of California, and therefore neither of these exceptions apply. The DOE  
 8 defendants are disregarded for purposes of citizenship.

9 23. In addition, this action does not fall within any of the other categorical  
 10 exceptions under CAFA. *See* 28 U.S.C. § 1332(d)(9)(A), (B), and (C) (making  
 11 exceptions for an action (1) "concerning a covered security"; (2) that relates to the  
 12 internal affairs or governance of a corporation or other form of business enterprise"; (3)  
 13 "that relates to the rights, duties (including fiduciary duties), and obligations related to  
 14 or created by or pursuant to any security..."); *see also* 28 U.S.C. § 1453(d) (same  
 15 exceptions).

16 **ORIGINAL JURISDICTION PURSUANT TO 28 U.S.C. § 1441(b)**

17 24. This Court also has jurisdiction over this case because there is diversity  
 18 of citizenship between Plaintiff and the sole Defendant, and the amount in  
 19 controversy exceeds \$75,000. 28 U.S.C. § 1441(b).

20 25. Plaintiff is a citizen of California (Complaint, ¶ 4). As set forth above,  
 21 Defendant is a citizen of Minnesota (*supra*, ¶ 20).

22 26. The citizenship of the fictitious "DOE" defendants named in Plaintiff's  
 23 Complaint must be disregarded for the purposes of determining diversity  
 24 jurisdiction. *See* 28 U.S.C. § 1441(b)(1). Complete diversity of citizenship exists. *See*  
 25 28 U.S.C. § 1441(b).

26 27. While Defendant disputes any liability to Plaintiff, Plaintiff's individual  
 27 claims place in controversy a sum greater than \$75,000. Plaintiff seeks a full refund of her  
 28 purchase price. He also seeks to recover statutory attorneys' fees.

1       28. As set forth previously, future attorneys' fees recoverable pursuant to a  
2 statute must be assessed when determining whether the amount in controversy has  
3 been met. *Fritsch*, 899 F.3d at 794; *see also Chavez*, 888 F.3d at 416; *Gonzales*, 840  
4 F.3d at 648-49. Plaintiff's counsel will incur more than \$75,000 in fees preparing the  
5 Complaint, taking discovery, depositions, and addressing motion practice directed at  
6 prosecuting Plaintiff's own individual claims, even without considering the fees  
7 related to class litigation. Many of the fees and costs associated with discovery into the  
8 merits of the case are the same regardless whether the case is pled as a class action or  
9 not. Furthermore, if Plaintiff's efforts to certify a class are unsuccessful, Plaintiff will  
10 incur more than \$75,000 in fees he will seek to recover if this litigation progresses  
11 through trial. Accordingly, this Court has original subject matter jurisdiction pursuant  
12 to 28 U.S.C. § 1441(b).

## **ALL PROCEDURAL REQUISITES ARE SATISFIED**

14        29. 28 U.S.C. § 1441(a) allows civil actions brought in state court to be  
15 removed to the district court “embracing the place where such action is pending.” The  
16 Complaint was filed and currently is pending in the Superior Court of the State of  
17 California for the County of Orange. This District is the proper venue for this action  
18 upon removal because it is the District that embraces the county where the state court  
19 action was pending.

20       30. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and  
21 orders are attached hereto as Exhibits 1 - 4.

22       31. Defendant will promptly serve a notice of filing of removal, with a copy  
23 of the Notice of Removal annexed thereto, on Plaintiff's attorney and will file such  
24 notice with the Clerk of the Superior Court of the State of California for the County  
25 of Orange.

## **CONCLUSION AND DEMAND FOR JURY TRIAL**

32. For the foregoing reasons, Defendant Pharmaganics LLC hereby removes this case from Superior Court of the State of California for the County of Orange to this United States District Court.

33. Defendant Pharmaganics LLC hereby demands a jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues subject to a jury trial raised in the Complaint.

Dated: January 17, 2023

## AMIN TALATI WASSERMAN, LLP

*/s/ William P. Cole*

William P. Cole

*Attorney for Defendant Pharmaganics, LLC*

## **EXHIBIT 1**

1 PACIFIC TRIAL ATTORNEYS  
2 A Professional Corporation  
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Assigned for All Purposes

Judge Lon F. Hurwitz

cx-103

6 Attorneys for Plaintiff and the Class  
7

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

9 **COUNTY OF ORANGE**

10 PEDRO IBARRA, individually and on behalf of  
all others similarly situated,

Case No. 30-2022-01294748-CU-CR-CXC

11 Plaintiff,

12 **CLASS ACTION COMPLAINT**

13 v.

14 PHARMAGENICS LLC, and DOES 1 through  
10, inclusive,

15 Defendants.

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## I. INTRODUCTION

Defendant sells a diet pill known as ““Dr. Stephanie’s Carb & Sugar Blocker” (the “Product”) by falsely claiming that it will cause meaningful and sustainable weight loss by disrupting the digestion of certain foods. Defendant’s claim is false: in fact, the United States Food and Drug Administration has warned that the efficacy claims related to the ingredients in the Product “are not supported by competent and reliable scientific evidence”, “lack substantiation”, and are “false and misleading.”

As set forth below, Defendant has violated numerous California laws and should be required to stop falsely advertising the product, provide refunds to all consumers, and take other appropriate corrective and remedial actions.

## II. JURISDICTION AND VENUE

1. This Court has jurisdiction over all causes of action asserted herein.

2. Venue is proper in this Court because Defendant knowingly engages in activities directed at consumers in this County and engaged in the wrongful conduct alleged herein against residents of this County.

3. Any out-of-state participants can be brought before this Court pursuant to California's "long-arm" jurisdictional statute.

### III. PARTIES

4. Plaintiff is a resident and citizen of California.

5. Defendant develops, manufactures, promotes, markets, distributes, and/or sells the Product to consumers in California.

6. The above-named Defendant, along with its affiliates and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants.

8. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

## IV. FACTS

9. On June 17, 2014, the United States Senate Subcommittee on Consumer Protection, Product Safety, and Insurance held a hearing titled Protecting Consumers from False and Deceptive Advertising of Weight-Loss Supplement Products. In her opening statement, committee Chair Senator Claire McCaskill stated that “With so many Americans desperate for anything that might make it easier to lose weight, it’s no wonder scam artists and fraudsters have turned to the \$60-billion weight-loss market to make a quick buck.”

10. False advertising of weight-loss products is truly an epidemic. Government regulators are overwhelmed because “One out of ten fraud claims submitted to the FTC are, in fact, for weight-loss products.” Indeed, Senator McCaskill stated that “the problem is much larger than any enforcement agency could possibly tackle on its own. Private stakeholders, companies that sell weight-loss products, media outlets, and other advertising platforms, as well as consumer watchdogs, must all do their part to help address this problem.”

11. Plaintiff is a consumer privacy advocate with dual motivations for purchasing the Product. First, Plaintiff was genuinely interested in using the product as intended. Second, Plaintiff is a “tester” who works to ensure that companies abide by the obligations imposed by California law. As someone who advances important public interests at the risk of vile personal attacks, Plaintiff should be “praised rather than vilified.” *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

12. In enacting the consumer protection statutes at issue, the California legislature chose to extend protections to all persons and consumers. Indeed, these statutes are largely enforced by civic-minded “testers” such as Plaintiff. See *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109 (9<sup>th</sup> Cir.



1 generally discussing value and importance  
 2 of the law (not the Constitution or  
 3 statutes).<sup>1</sup>

4 that it is a “Carb and Sugar Blocker”:



21 14. In accompanying promotional and marketing materials, Defendant claims:

22 **"fights glucose spikes, carb absorption, sugar cravings, fat storage"**

23  
 24  
 25 <sup>1</sup> Civil rights icon Rosa Parks was acting as a “tester” when she initiated the Montgomery Bus  
 26 Boycott in 1955, as she voluntarily subjected herself to an illegal practice to obtain standing to  
 27 challenge the practice in Court. See <https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-stand-against-segregation/> (“Contrary to popular  
 28 myth, Rosa Parks was not just a tired seamstress who merely wanted to sit down on a bus seat that afternoon. She refused to give up her seat on principle. Parks had long served as the secretary of the Montgomery branch of the NAACP [and] challenging segregation in Montgomery’s transportation system was on the local civil rights agenda for some time.”) (last downloaded November 2022).

1       ***"""helps block digestive enzyme that absorbs sugar"""***

2  
3       ***"""promotes healthy after-meal blood sugar levels"""***

4  
5       ***"""supports healthy insulin function"""***

6  
7       ***"""regulates sugar cravings""""***

8       15.      The above-quoted statements are false, misleading, deceptive, and unlawful. Moreover,  
9 the above-quoted statements create express or implied warranties and Defendant has breached said  
10 warranties for the reasons described herein.

11      16.      Defendant's false claims convey that the Product is capable of helping consumers lose  
12 meaningful weight in a sustainable manner. However, these claims, taken individually and especially  
13 in context of the label as a whole, are false and misleading.

14      17.      Within the class period, Plaintiff purchased the Product in California based partly upon  
15 the above-referenced efficacy claims. Plaintiff used the Product as directed but did not experience any  
16 of the benefits promised by the Product.

17      18.      Numerous randomized, placebo controlled scientific studies demonstrate that the  
18 ingredients in the Product do not provide any meaningful and sustainable weight management benefits  
19 in humans when taken as directed and at safe levels. Indeed, the United States Food and Drug  
20 Administration has warned that the efficacy claims related to the ingredients in the Product "are not  
21 supported by competent and reliable scientific evidence", "lack substantiation", and are "false and  
22 misleading."

23      19.      On information and belief, Defendant makes the false and misleading efficacy claims  
24 by purporting to rely on one or more knowingly flawed or discredited clinical trials. This is because  
25 most clinical trials of dietary supplements have flawed methodology that renders them useless in  
26 determining the real value of the studied ingredients, leading to conclusions that lack scientific  
27 meaning, are inaccurate, and defy overwhelming contrary evidence. See

1 <https://www.biospace.com/article/most-vitamin-studies-flawed-oregon-state-university-researcher-reveals-/> (last downloaded November 2022).

3 **V. CLASS ALLEGATIONS**

4 20. Plaintiff brings this action individually and on behalf of all others similarly situated (the  
5 “Class”) defined as follows:

6 **All persons who purchased the Product in California for personal use  
7 during the Class Period.**

8 A. **NUMEROUSITY**: Plaintiff does not know the number of Class Members but believes the  
9 number to be in the thousands, if not more. The exact identities of Class Members may be ascertained  
10 by the records maintained by Defendant and its authorized retailers.

11 B. **COMMONALITY**: Common questions of fact and law exist as to all class members,  
12 and predominate over any questions affecting only individual members of the Class. Such common  
13 legal and factual questions, which do not vary between Class members, and which may be determined  
14 without reference to the individual circumstances of any Class Member, include but are not limited to  
15 the following:

- 16 i. Whether Defendant breached any express warranties made to Plaintiff and the Class;
- 17 ii. Whether Defendant breached any implied warranties made to Plaintiff and the Class;
- 18 iii. Whether Defendant engaged, and continues to engage, in unfair or deceptive acts and  
practices in connection with the marketing, advertising, and sales of the Product;
- 19 iv. Whether Defendant violated other consumer protection statutes, false advertising statutes,  
or state deceptive business practices statutes;
- 20 v. The proper amount of restitution, damages, and punitive damages; and
- 21 vi. The proper injunctive relief, including a corrective advertising campaign.

22 C. **TYPICALITY**: As a person who purchased the product for personal use and used it as  
23 directed, Plaintiff is asserting claims that are typical of the Class.

24 D. **ADEQUACY**: Plaintiff will fairly and adequately protect the interests of the members  
25 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals  
26

with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion would otherwise be improper are excluded.

E. **SUPERIORITY**: A class action is superior to other available methods of adjudication because individual litigation of the claims of all Class Members is impracticable and inefficient. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

## VI. CAUSES OF ACTION

## **FIRST CAUSE OF ACTION**

## **Violations of the Unfair Competition Law,**

**Cal. Bus. & Prof. Code §§ 17200 et seq.**

21. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq., proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.

22. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- i. By knowingly and intentionally concealing from Plaintiff and the other Class members that the Product cannot provide the advertised weight management or weight-loss benefits while obtaining money from Plaintiff and the Classes;
- ii. By misrepresenting the nature of the Product and the Product's effectiveness at providing the weight management and weight-loss benefits;
- iii. By engaging in the conduct giving rise to the claims asserted in this complaint;
- iv. By violating California Civil Code §§ 1709-1711 by making affirmative misrepresentations about the Product;
- v. By violating California Civil Code §§ 1709-1711 by suppressing material information about the Product;
- vi. By violating the California Commercial Code for breaches of express and implied warranties.
- vii. By violating Cal. Bus. & Prof. Code § 12606.2 and 21 C.F.R. § 100.100;

- viii. By violating the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.;
- ix. By violating the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;
- x. By violating the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 et seq.

23. Such conduct is ongoing and continues to this date.

23. Such conduct is ongoing and continues to this date.

## **SECOND CAUSE OF ACTION**

## **Violations of the False Advertising Law,**

**Cal. Bus. & Prof. Code §§ 17500 et seq.**

9 24. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
10 forth in full herein.

11       25.       The FAL provides that “[i]t is unlawful for any person, firm, corporation or association,  
12 or any employee thereof with intent directly or indirectly to dispose of real or personal property or to  
13 perform services” to disseminate any statement “which is untrue or misleading, and which is known,  
14 or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. &  
15 Prof. Code § 17500.

16       26.       As alleged herein, the advertisements, labeling, policies, acts, and practices of  
17 Defendant relating to the advertising of the Product are untrue and misleading.

18 27. Plaintiff has standing to pursue this claim as Plaintiff suffered injury in fact as a result  
19 of Defendant's actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff  
20 purchased the Product in reliance on Defendant's false and misleading labeling claims that the  
21 Product, among other things, aids in weight management.

22 28. Defendant profited from its sale of the falsely and deceptively advertised Product to  
23 unwarv consumers.

24 29. As a result, Plaintiff, the Class, and the general public are entitled to public injunctive  
25 and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant  
26 was unjustly enriched.

30. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of themselves and the Class, seek an order enjoining Defendant from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

### **THIRD CAUSE OF ACTION**

## **Violations of the Consumer Legal Remedies Act,**

### **Cal. Civ. Code §§ 1750 et seq.**

31. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

32. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

33. Defendant's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of the Product for personal, family, or household purposes by Plaintiff and Class Members, and violated and continue to violate the following sections of the CLRA:

- i. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have; and
- ii. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

34. Defendant profited from the sale of the falsely, deceptively, and unlawfully advertised Product to unwary consumers. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA.

35. Pursuant to §1782 of the CLRA, by this Complaint Plaintiff has notified Defendant in writing of the particular violations of §1770 of the CLRA and demanded that Defendant rectify the actions described above by providing monetary relief, agreeing to be bound by its legal obligations, and giving notice to all affected customers of its intent to do so.

36. If Defendant does not comply within 30 days, this Complaint shall be deemed to include a request for monetary damages as set forth herein. Until such time, this Complaint seeks

1 only injunctive relief for Defendant's violations of the CLRA and not damages under §§ 1770 and  
 2 1782.

3 **FOURTH CAUSE OF ACTION**

4 **Breach of Express Warranties,**

5 **Cal. Com. Code § 2313(1)**

6 37. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
 7 forth in full herein.

8 38. Through the Product's label and advertising, Defendant made affirmations of fact or  
 9 promises, or description of goods, described above, which were "part of the basis of the bargain," in  
 10 that Plaintiff and the Class purchased the Product in reasonable reliance on those statements. Cal.  
 11 Com. Code § 2313(1).

12 39. The foregoing representations were material and were a substantial factor in causing  
 13 the harm suffered by Plaintiff and the Class because they concerned alleged efficacy of the Product  
 14 regarding the ability to aid with weight management.

15 40. These representations had an influence on consumers' decisions in purchasing the  
 16 Product.

17 41. Defendant made the above representations to induce Plaintiff and the members of Class  
 18 to purchase the Product. Plaintiff and the Class members relied on the representations when  
 19 purchasing Defendant's product.

20 42. Defendant breached the express warranties by selling a Product that does not and  
 21 cannot provide the promised benefits.

22 43. That breach actually and proximately caused injury in the form of the lost purchase  
 23 price that Plaintiff and Class members paid for the Product.

24 **FIFTH CAUSE OF ACTION**

25 **Breach of Implied Warranties,**

26 **Cal. Com. Code § 2314**

27 44. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set  
 28 forth in full herein.

45. Defendant, through its acts and omissions set forth herein, in the sale, marketing, and promotion of the Product, made representations to Plaintiff and the Class that, among other things, the Product would aid in weight management.

46. Plaintiff and the Class bought the Product manufactured, advertised, and sold by Defendant, as described herein.

47. Defendant is a merchant with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers, an implied warranty that those goods were merchantable.

48. However, Defendant breached that implied warranty in that the Product does not aid in weight management.

49. As an actual and proximate result of Defendant's conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendant to be merchantable in that it did not conform to promises and affirmations made on the container or label of the goods nor is it fit for its ordinary purpose, aiding in weight management.

50. Plaintiff and Class have sustained damages as a proximate result of the foregoing breach of implied warranty in the amount of the Product's purchase price.

## VII. PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself, all others similarly situated, and the general public, pray for judgment against Defendant as to each and every cause of action, including:

- i. An order certifying this action as a class action pursuant to Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and/or 23(b)(3);
- ii. An order maintaining this action as a class action and/or an order maintaining a particular issue class action pursuant to Federal Rule of Civil Procedure 23(c)(4);
- iii. An order requiring Defendant to bear the costs of class notice;
- iv. An order appointing Plaintiff as the class representatives and Pacific Trial Attorneys as Class Counsel;
- v. An order compelling Defendant to conduct a corrective advertising campaign;

- vi. An order compelling Defendant to destroy all misleading and deceptive advertising materials and product labels, and to recall all offending Products;
- vii. An order awarding disgorgement of Defendant's profits that were obtained from its ill-gotten gains in connection with its sales of the Product to Plaintiff and the class members;
- viii. An order awarding restitution in the amount of the purchase price paid by the class members for the Product;
- ix. An award for punitive damages;
- x. An award of attorneys' fees and costs; and
- xi. An order providing for all other such further relief as may be just and proper.

Dated: December 2, 2022

## PACIFIC TRIAL ATTORNEYS, APC

By: Scott J. Ferrell  
Scott. J. Ferrell  
Attorneys for Plaintiff

## **EXHIBIT 2**

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

PHARMAGENICS LLC, a Minnesota limited liability company, and  
DOES 1 through 10, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PEDRO IBARRA, individually and on behalf of all others similarly  
situated,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE  
751 West Santa Ana Blvd., Santa Ana, CA 92701

CASE NUMBER:  
(Número del Caso):

30-2022-01294748-CU-CR-CXC

Judge Lon F. Hurwitz

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Scott J. Ferrell (Bar # 202091) / Victoria C. Knowles (Bar # 277231)

PACIFIC TRIAL ATTORNEYS, APC

4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660

DATE: 12/02/2022 DAVID H. YAMASAKI, Clerk of the Court

(Fecha)

Clerk, by

(Secretario) \_\_\_\_\_

Phone No.: (949) 706-6464

, Deputy  
(Adjunto)

*G. Ramirez*

(For proof of service of this summons, use Proof of Service of Summons (form POS-011)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):  
  
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):



## **EXHIBIT 3**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

Scott J. Ferrell (Bar #202091) / Victoria C. Knowles (Bar # 277231)  
 PACIFIC TRIAL ATTORNEYS, A Professional Corporation  
 4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660

TELEPHONE NO.: (949) 706-6464

FAX NO.:

ATTORNEY FOR (Name): Plaintiff and the Class

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

STREET ADDRESS: 751 West Santa Ana Blvd.

MAILING ADDRESS:

CITY AND ZIP CODE: Santa Ana, CA 92701

BRANCH NAME:

CASE NAME:

Ibarra v. Pharmagenics LLC, et al.

**CIVIL CASE COVER SHEET**

**Unlimited**  **Limited**  
 (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

**Complex Case Designation**

**Counter**  **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

30-2022-01294748-CU-CR-CXC

JUDGE: **Judge Lon F. Hurwitz**  
 DEPT:

CM-010

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

**Auto Tort**

Auto (22)  
 Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property**

**Damage/Wrongful Death Tort**

Asbestos (04)  
 Product liability (24)  
 Medical malpractice (45)  
 Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

Business tort/unfair business practice (07)  
 Civil rights (08)  
 Defamation (13)  
 Fraud (16)  
 Intellectual property (19)  
 Professional negligence (25)  
 Other non-PI/PD/WD tort (35)

**Employment**

Wrongful termination (36)  
 Other employment (15)

**Contract**

Breach of contract/warranty (06)  
 Rule 3.740 collections (09)  
 Other collections (09)  
 Insurance coverage (18)  
 Other contract (37)

**Real Property**

Eminent domain/Inverse condemnation (14)  
 Wrongful eviction (33)  
 Other real property (26)

**Unlawful Detainer**

Commercial (31)  
 Residential (32)  
 Drugs (38)

**Judicial Review**

Asset forfeiture (05)  
 Petition re: arbitration award (11)  
 Writ of mandate (02)  
 Other judicial review (39)

**Provisionally Complex Civil Litigation**  
 (Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)  
 Construction defect (10)  
 Mass tort (40)  
 Securities litigation (28)  
 Environmental/Toxic tort (30)  
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

**Enforcement of Judgment**

Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

RICO (27)  
 Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**

Partnership and corporate governance (21)  
 Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): Five (5)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 2, 2022

Scott J. Ferrell

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

### Auto Tort

- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

### Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Asbestos Property Damage
- Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
- Medical Malpractice–Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
- Premises Liability (e.g., slip and fall)
- Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
- Intentional Infliction of Emotional Distress
- Negligent Infliction of Emotional Distress
- Other PI/PD/WD

### Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
- Legal Malpractice
- Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

### Employment

- Wrongful Termination (36)
- Other Employment (15)

### CASE TYPES AND EXAMPLES

#### Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
- Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case–Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
- Auto Subrogation
- Other Coverage
- Other Contract (37)
- Contractual Fraud
- Other Contract Dispute

#### Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
- Writ of Possession of Real Property
- Mortgage Foreclosure
- Quiet Title
- Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

#### Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

#### Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
- Writ–Administrative Mandamus
- Writ–Mandamus on Limited Court Case Matter
- Writ–Other Limited Court Case Review
- Other Judicial Review (39)
- Review of Health Officer Order
- Notice of Appeal–Labor Commissioner Appeals

#### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

#### Enforcement of Judgment

- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County)
- Confession of Judgment (*non-domestic relations*)
- Sister State Judgment
- Administrative Agency Award (*not unpaid taxes*)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

#### Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

#### Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
- Civil Harassment
- Workplace Violence
- Elder/Dependent Adult Abuse
- Election Contest
- Petition for Name Change
- Petition for Relief From Late Claim
- Other Civil Petition

## **EXHIBIT 4**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 12/22/2022

TIME: 09:54:00 AM

DEPT: CX103

JUDICIAL OFFICER PRESIDING: Under the Direction of Lon F. Hurwitz

CLERK: M. Diaz

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: . None

CASE NO: 30-2022-01294748-CU-CR-CXC CASE INIT.DATE: 12/02/2022

CASE TITLE: Ibarra vs. Pharmagenics LLC, a Minnesota limited liability company

CASE CATEGORY: Civil - Unlimited CASE TYPE: Civil Rights

EVENT ID/DOCUMENT ID: 73912445

**EVENT TYPE:** Chambers Work

**APPEARANCES**

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Each party who has not paid the Complex fee of \$ 1,000.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

**The Case Management Conference is scheduled for 04/19/2023 at 01:30 PM in Department CX103.**

**CASE MANAGEMENT CONFERENCE:**

Plaintiff shall, at least **5 days before the hearing**, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the CMC (Case management Statement) form used for non-complex cases (Judicial Council Form CM-110).

**ELECTRONIC FILING:**

This case is subject to **mandatory electronic filing** pursuant to Superior Court Rules, County of Orange, Rule 352 and mandatory electronic service by order of this Court. Plaintiff shall give notice of the Status Conference and the electronic filing and service requirement to all parties of record or known to plaintiff and shall attach a copy of this minute order.

**PROPOSED ORDERS:**

All **proposed orders** (including those submitted pursuant to stipulation) must be submitted in 2 electronic formats. One copy is to be filed in Word (without attachments), and another copy in.pdf format with all attachments/exhibits attached to it. Failure to follow this rule may result in the proposed order not being brought to the attention of the Court in a timely fashion. Ensure that the proposed order is identified as a "Proposed Order".

**BOOKMARKING:**

Bookmarking of exhibits to motions and supporting declarations - **The court requires strict compliance with CRC, rule 3.1110 (f) (4)** which requires electronic exhibits to include electronic bookmarks with the links to the first page of each exhibit, and with bookmarked titles that identify the exhibit number or letter and briefly describe the exhibit. CRC, rule 3.1110 (f) (4).

The court may continue a motion that does not comply with rule 3.1110 (f) (4) and require the parties to comply with that rule before resetting the hearing.

Additional departmental information may be obtained by visiting the Court's website at:

**CIVIL COMPLEX GUIDELINES –**

<http://www.occourts.org/directory/civil/complex-civil/department-guidelines.pdf>

**Complex Civil Courtroom Schedule - GUIDELINES FOR CX103–**

[http://www.occourts.org/directory/civil/complex-civil/calendar-schedule/guidelines\\_CX103.html](http://www.occourts.org/directory/civil/complex-civil/calendar-schedule/guidelines_CX103.html)

**CIVIL TENTATIVE RULINGS –**

<http://www.occourts.org/directory/civil/tentative-rulings/>

Court orders clerk to give notice.

Plaintiff is to give notice to any party not listed on the Clerk's Certificate of Mailing/Electronic Service and is to file a Proof of Service.